

EX PARTE OR LATE FILED  
THE MARSHALL COMPANY

2121 AVENUE OF THE STARS  
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WASHINGTON, D.C. 20036  
(202) 775-8469

January 23, 1995

JAN 24 1995

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: Notification of Permitted Written Ex Parte Presentation  
in PP Docket No. 93-253

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL  
The Marshall Company, pursuant to Section 1.1206(a)(1)-(a)(2) of the Commission's rules, hereby submits an original and one copy of a permitted ex parte written presentation sent to Chairman Hundt and Commissioners Quello, Barrett, Ness, and Chong regarding PP Docket No. 93-253. Other than addressing, the letters are identical.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Sherrie Marshall

Enclosures

No. of Copies rec'd 0+1  
List A B C D E

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January 23, 1995

JAN 24 1995

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Re: Broadband PCS Auctions, PP Docket 93-253 --  
January 10, 1995 Erratum

Dear Chairman Hundt:

As a designated entity owner planning to participate in the Commission's upcoming entrepreneur's block broadband PCS auctions, I am writing to express my serious concerns regarding a rule change made in a recent Erratum<sup>1</sup> to the Commission's Broadband PCS Fifth Memorandum Opinion and Order.<sup>2</sup>

Specifically, the Erratum changed the "unjust enrichment" provisions applicable to broadband PCS designated entities by requiring a repayment of all bidding credits if the designated entity transfers or sells the controlling interest in its license to any non-designated entity within the entire ten-year license period. This is directly contrary to the provisions adopted in the Fifth MO&O, and relied upon by all designated entities preparing to bid in the upcoming BTA auctions. Indeed, the Fifth MO&O established only a five-year holding period during which bidding credit reimbursements would be required.<sup>3</sup>

If allowed to stand, this rule change will make it extraordinarily difficult for designated entities to secure sufficient capital to bid on and acquire PCS licenses. For such a significant rule change to be issued as an Erratum just six weeks prior to the February 28th application deadline for the entrepreneur's block auctions is particularly unsettling and may, in fact, be contrary to the Commission's own rules.<sup>4</sup>

I have been working with potential investors and strategic partners for over six months to create a financially viable designated entity. For the past two months (since the

<sup>1</sup> Erratum, DA 95-19 (released January 10, 1995).

<sup>2</sup> Fifth Memorandum Opinion and Order, PP Docket No. 93-253 (released November 23, 1994) ("Fifth MO&O").

<sup>3</sup> 47 C.F.R. § 24.712(d)(1)-(d)(2) as adopted in the Fifth MO&O.

<sup>4</sup> Sec 47 C.F.R. § 1.108, which requires the Commission to act within 30 days on its own motion (such as through an Erratum) to set aside or amend previously approved rules.

November 28th release of the Fifth MO&O) my designated entity, New Communications Services, Inc. (NEWCOM), has been engaged in extensive negotiations with potential investors and strategic partners based on the five-year holding period. We were in the process of finalizing those commitments when the Erratum was issued. Now both our financial commitments and strategic partnership agreements are in jeopardy and may not go forward if the Erratum is not corrected.

There are a number of practical business reasons why a designated entity should have the ability to transfer all or part of its interest in a broadband PCS license before the end of the ten-year license term. Ten years is much longer than most potential financiers and passive equity investors wish to wait before obtaining a significant return on their investment. Further, with a five-year holding period, potential investors could calculate with some degree of certainty the value of a particular license and use this figure to calculate cash flows, needed loan amounts, and other business judgments. The ten-year period removes, or at least significantly lessens, this degree of certainty, making such calculations more difficult and uncertain and making investment in designated entities much less attractive.

Based on my own experiences with potential investors and strategic partners, I can confirm that this Erratum has had a substantial adverse impact on the willingness of such groups to invest in designated entities. Standard equity and debt financing arrangements generally allow for some liquidity of investment in the medium term. Such liquidity is essential to commercial lenders and venture capitalists, particularly given the high upfront capital expenditures and lack of near-term cash flow inherent in establishing a PCS business.

The Commission is properly concerned with ensuring that designated entities be *bona fide* and have a legitimate interest in participating in broadband PCS for the long term. There are, however, sufficient rules in place to ensure that this occurs.

Requiring repayment of bidding credits for any sale or transfer to any non-designated entity (which are the very firms most likely to have sufficient capital to acquire a successful designated entity) during the entire ten-year license period is directly and adversely affecting the Commission's stated objectives of encouraging participation by women and minority-owned small businesses in broadband PCS. Accordingly, I respectfully urge the Commission to withdraw the Bureau's Erratum and reinstate the five-year unjust enrichment provision contained in the Fifth MO&O.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sherrie Marshall JT".

Sherrie Marshall

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January 23, 1995

JAN 24 1995

The Honorable James Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Re: Broadband PCS Auctions, PP Docket 93-253 --  
January 10, 1995 Erratum

Dear Commissioner Quello:

As a designated entity owner planning to participate in the Commission's upcoming entrepreneur's block broadband PCS auctions, I am writing to express my serious concerns regarding a rule change made in a recent Erratum<sup>1</sup> to the Commission's Broadband PCS Fifth Memorandum Opinion and Order.<sup>2</sup>

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The Commission is properly concerned with ensuring that designated entities be *bona fide* and have a legitimate interest in participating in broadband PCS for the long term. There are, however, sufficient rules in place to ensure that this occurs.

Requiring repayment of bidding credits for any sale or transfer to any non-designated entity (which are the very firms most likely to have sufficient capital to acquire a successful designated entity) during the entire ten-year license period is directly and adversely affecting the Commission's stated objectives of encouraging participation by women and minority-owned small businesses in broadband PCS. Accordingly, I respectfully urge the Commission to withdraw the Bureau's Erratum and reinstate the five-year unjust enrichment provision contained in the Fifth MO&O.

Sincerely,

A handwritten signature in cursive script, reading "Sherrie Marshall / JT".

Sherrie Marshall

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January 23, 1995

JAN 24 1995

The Honorable Andrew Barrett  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

Re: Broadband PCS Auctions, PP Docket 93-253 --  
January 10, 1995 Erratum

Dear Commissioner Barrett:

As a designated entity owner planning to participate in the Commission's upcoming entrepreneur's block broadband PCS auctions, I am writing to express my serious concerns regarding a rule change made in a recent Erratum<sup>1</sup> to the Commission's Broadband PCS Fifth Memorandum Opinion and Order.<sup>2</sup>

Specifically, the Erratum changed the "unjust enrichment" provisions applicable to broadband PCS designated entities by requiring a repayment of all bidding credits if the designated entity transfers or sells the controlling interest in its license to any non-designated entity within the entire ten-year license period. This is directly contrary to the provisions adopted in the Fifth MO&O, and relied upon by all designated entities preparing to bid in the upcoming BTA auctions. Indeed, the Fifth MO&O established only a five-year holding period during which bidding credit reimbursements would be required.<sup>3</sup>

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Sincerely,

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Sherrie Marshall

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January 23, 1995

JAN 24 1995

The Honorable Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Re: Broadband PCS Auctions, PP Docket 93-253 --  
January 10, 1995 Erratum

Dear Commissioner Ness:

As a designated entity owner planning to participate in the Commission's upcoming entrepreneur's block broadband PCS auctions, I am writing to express my serious concerns regarding a rule change made in a recent Erratum<sup>1</sup> to the Commission's Broadband PCS Fifth Memorandum Opinion and Order.<sup>2</sup>

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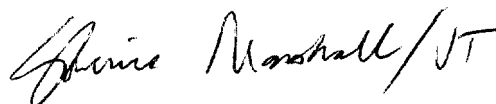
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Sincerely,

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Sherrie Marshall

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January 23, 1995

JAN 24 1995

The Honorable Rachelle Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Re: Broadband PCS Auctions, PP Docket 93-253 --  
January 10, 1995 Erratum

Dear Commissioner Chong:

As a designated entity owner planning to participate in the Commission's upcoming entrepreneur's block broadband PCS auctions, I am writing to express my serious concerns regarding a rule change made in a recent Erratum<sup>1</sup> to the Commission's Broadband PCS Fifth Memorandum Opinion and Order.<sup>2</sup>

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